

## RECIPROCAL TRADE

*Agreement signed at Washington, for the United States and the United Kingdom, November 17, 1938, with exchange of notes and lumber declaration*<sup>1</sup>

*Proclaimed by the President of the United States November 25, 1938*

*Ratified by the United Kingdom, in respect of Canada, May 19, 1939*

*Proclamation and ratification exchanged at Ottawa June 17, 1939*

*Supplementary proclamations by the President of the United States June 17, 1939,<sup>2</sup> and February 22, 1947<sup>3</sup>*

*Entered into force June 17, 1939; article IX applied provisionally on and after November 26, 1938; articles I, VI, and VII applied provisionally on and after January 1, 1939*

*Supplemented and amended by agreement of December 30, 1939<sup>4</sup>*

*Rendered inoperative from January 1, 1948, by agreement of October 30, 1947<sup>5</sup>*

53 Stat. 2348; Executive Agreement Series 149

### AGREEMENT

The President of the United States of America and His Majesty the King of Great Britain, Ireland and the British dominions beyond the Seas, Emperor of India, in respect of Canada;

Desiring to facilitate and extend still further the commercial relations existing between the United States of America and Canada by granting reciprocal concessions and advantages for the promotion of trade;

Taking into account the absence of any restriction upon the settlement of commercial obligations arising out of the trade between the United States of America and Canada;

Have resolved to replace the Trade Agreement concluded between them on November 15, 1935,<sup>6</sup> at Washington by a new and more comprehensive Agreement and have appointed for this purpose as their Plenipotentiaries:

<sup>1</sup> For schedules annexed to agreement, see 53 Stat. 2357 or p. 10 of EAS 149.

<sup>2</sup> For proclamations relating to allocation of tariff quota on heavy cattle, see 53 Stat. 2397 or p. 53 of EAS 149; 54 Stat. 2290 (EAS 170); 54 Stat. 2445 (EAS 190); and 55 Stat. 1387 (EAS 225).

<sup>3</sup> For proclamation withdrawing concession on linen fire hose, see *Department of State Bulletin*, Mar. 9, 1947, p. 453.

<sup>4</sup> EAS 184, *post*, p. 165.

<sup>5</sup> TIAS 1702, *post*, p. 451.

<sup>6</sup> EAS 91, *ante*, p. 75.

The President of the United States of America:

Mr. Cordell Hull, Secretary of State of the United States of America; and

His Majesty the King of Great Britain, Ireland and the British dominions beyond the Seas, Emperor of India:

For Canada:

The Right Honorable W. L. Mackenzie King, Prime Minister, President of the Privy Council and Secretary of State for External Affairs of Canada;

Who, having communicated to each other their full powers, found in good and due form, have agreed on the following articles:

#### ARTICLE I

1. The United States of America and Canada will grant each other unconditional and unrestricted most-favored-nation treatment in all matters concerning customs duties and subsidiary charges of every kind and in the method of levying duties, and, further, in all matters concerning the rules, formalities and charges imposed in connection with the clearing of goods through the customs, and with respect to all laws or regulations affecting the sale or use of imported goods within the country.

2. Accordingly, articles the growth, produce or manufacture of either country imported into the other shall in no case be subject, in regard to the matters referred to above, to any duties, taxes or charges other or higher, or to any rules or formalities other or more burdensome, than those to which the like articles the growth, produce or manufacture of any other foreign country are or may hereafter be subject.

3. Similarly, articles exported from the territory of the United States of America or Canada and consigned to the territory of the other country shall in no case be subject with respect to exportation and in regard to the above-mentioned matters, to any duties, taxes or charges other or higher, or to any rules or formalities other or more burdensome, than those to which the like articles when consigned to the territory of any other foreign country are or may hereafter be subject.

4. Any advantage, favor, privilege or immunity which has been or may hereafter be granted by the United States of America or Canada in regard to the above-mentioned matters, to any article originating in any other foreign country or consigned to the territory of any other foreign country shall be accorded immediately and without compensation to the like article originating in or consigned to the territory of Canada or the United States of America, respectively, and irrespective of the nationality of the carrier.

#### ARTICLE II

1. No prohibition or restriction shall be imposed or maintained on the importation into either country of any article, from whatever place arriving,

the growth, produce or manufacture of the other country, to which the importation of the like article the growth, produce or manufacture of any other foreign country is not similarly subject.

2. No prohibition or restriction shall be imposed or maintained on the exportation of any article from either country to the other to which the exportation of the like article to any other foreign country is not similarly subject.

### ARTICLE III

If imports of any article into either country should be regulated either as regards the total amount permitted to be imported or as regards the amount permitted to be imported at a specified rate of duty, and if shares are allocated to countries of export, the share allocated to the other country shall be based upon the proportion of the total imports of such article from all foreign countries supplied by that country in past years, account being taken in so far as practicable in appropriate cases of any special factors which may have affected or may be affecting the trade in that article. In those cases in which the other country is a relatively large supplier of any such article, the Government of the country imposing the regulations shall, whenever practicable, consult with the Government of the other country before the share to be allocated to that country is determined.

### ARTICLE IV

1. If either country establishes or maintains a monopoly for the importation, production or sale of a particular commodity or grants exclusive privileges, formally or in effect, to one or more agencies to import, produce or sell a particular commodity, the Government of the country establishing or maintaining such monopoly, or granting such monopoly privileges, agrees that in respect of the foreign purchases of such monopoly or agency the commerce of the other country shall receive fair and equitable treatment. To this end it is agreed that in making its foreign purchases of any product such monopoly or agency will be influenced solely by those considerations, such as price, quality, marketability, and terms of sale, which would ordinarily be taken into account by a private commercial enterprise interested solely in purchasing such product on the most favorable terms.

2. In awarding contracts for public works and in purchasing supplies, neither Government shall discriminate against articles the growth, produce or manufacture of the territories of the other country in favor of those of any other foreign country.

### ARTICLE V

Articles the growth, produce or manufacture of the United States of America or Canada shall, after importation into the other country, be exempt from all internal taxes, fees, charges or exactions other or higher than those

payable on like articles of national origin or any other origin, except as otherwise required by laws in force on the day of the signature of this Agreement and subject to the limitations on the authority of either Government.

#### ARTICLE VI

1. Articles the growth, produce or manufacture of the United States of America enumerated and described in Schedule I <sup>7</sup> annexed to this Agreement shall, on their importation into Canada, be exempt from ordinary customs duties in excess of those set forth in the said Schedule, subject to the conditions therein set out. The said articles shall also be exempt from all other duties, taxes, fees, charges, or exactions, imposed on or in connection with importation, in excess of those imposed on the day of the signature of this Agreement or required to be imposed thereafter under laws of Canada in force on the day of the signature of this Agreement.

2. Schedule I shall have full force and effect as an integral part of this Agreement.

#### ARTICLE VII

1. Articles the growth, produce or manufacture of Canada enumerated and described in Schedule II annexed to this Agreement shall, on their importation into the United States of America, be exempt from ordinary customs duties in excess of those set forth and provided for in the said Schedule, subject to the conditions therein set out. The said articles shall also be exempt from all other duties, taxes, fees, charges, or exactions, imposed on or in connection with importation, in excess of those imposed on the day of the signature of this Agreement or required to be imposed thereafter under laws of the United States of America in force on the day of the signature of this Agreement.

2. Schedule II shall have full force and effect as an integral part of this Agreement.

#### ARTICLE VIII

1. The provisions of Articles VI and VII of this Agreement shall not prevent the Government of either country from imposing at any time on the importation of any article a charge equivalent to an internal tax imposed in respect of a like domestic article or in respect of a commodity from which the imported article has been produced or manufactured in whole or in part.

2. Moreover, the provisions of Articles VI and VII shall not be construed to embrace such reasonable fees, charges or exactions, imposed at any time by the Government of either country in connection with the documentation of any shipment, as are commensurate with the cost of the services performed.

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<sup>7</sup> For schedules annexed to agreement, see 53 Stat. 2357 or p. 10 of EAS 149.

## ARTICLE IX

Sawed lumber and timbers, telephone, trolley, electric-light, and telegraph poles of wood, and bundles of shingles, the growth, produce or manufacture of Canada, imported into the United States of America, shall not be required to be marked to indicate their origin in any case where the imported article is of the same class or kind as articles which were imported into the United States of America in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin.

## ARTICLE X

1. No prohibition, restriction or any form of quantitative regulation, whether or not operated in connection with an agency of centralized control, shall be imposed or maintained in Canada on the importation or sale of any article the growth, produce or manufacture of the United States of America enumerated and described in Schedule I, or in the United States of America on the importation or sale of any article the growth, produce or manufacture of Canada enumerated and described in Schedule II, except as otherwise expressly provided in the said Schedules.

2. The foregoing provision shall not apply to quantitative regulations in whatever form which may hereafter be imposed by the Government of either country on the importation or sale of any article the growth, produce or manufacture of the other, in conjunction with governmental measures or measures under governmental authority

(a) operating to regulate or control the production, market supply, quality or price of the like article of domestic growth, production or manufacture; or

(b) operating to increase the labor costs of production of the like article of domestic growth, production or manufacture;

Provided, however, that the Government proposing to impose any such quantitative regulation shall have satisfied itself, in the case of measures described in subparagraph (a) of this paragraph, that such quantitative regulation is necessary to secure the effective operation of such measures, and, in the case of measures described in subparagraph (b), that such measures are causing the domestic production of the article concerned to be injuriously affected by imports which constitute an abnormal proportion of the total consumption of such article in relation to the proportion supplied in the past by foreign countries.

3. Whenever either Government proposes to impose or to effect a substantial alteration in any quantitative regulation authorized by the preceding paragraph, that Government shall give notice in writing to that effect to the other and shall, upon request, enter into consultation regarding the matter.

If agreement is not reached within thirty days after the receipt of the notice the Government giving it shall be free to impose or alter the regulation at any time, and the other Government shall be free within fifteen days after such action is taken to terminate this Agreement in its entirety on giving thirty days' notice in writing to that effect.

#### ARTICLE XI

In respect of articles the growth, produce or manufacture of the United States of America enumerated and described in Schedule I, imported into Canada, and of articles the growth, produce or manufacture of Canada enumerated and described in Schedule II, imported into the United States of America, on which ad valorem rates of duty, or duties based upon or regulated in any manner by value, are or may be assessed, the general principles on which dutiable value is determined in each of the importing countries on the day of the signature of this Agreement shall not be altered so as to impair the value of any of the concessions provided for in this Agreement.

#### ARTICLE XII

1. Nothing in this Agreement shall be construed to prevent the enforcement of such measures as the Government of either country may see fit to adopt

- (a) relating to the importation or exportation of gold or silver;
- (b) relating to the control of the import or export or sale for export of arms, ammunition, or implements of war, and, in exceptional circumstances, all other military supplies;
- (c) relating to neutrality or to public security; or
- (d) should that country be engaged in hostilities or war.

2. Subject to the requirement that, under like circumstances and conditions, there shall be no arbitrary discrimination by either country against articles the growth, produce or manufacture of the other country in favor of the like articles the growth, produce or manufacture of any other foreign country, the provisions of this Agreement shall not extend to prohibitions or restrictions

- (a) imposed on moral or humanitarian grounds;
- (b) designed to protect human, animal or plant health or life;
- (c) relating to prison-made goods; or
- (d) relating to the enforcement of police or revenue laws.

#### ARTICLE XIII

If a wide variation should occur in the rate of exchange between the currencies of the United States of America and Canada, and if the Government

of either country should consider the variation so substantial as to prejudice the industries or commerce of that country, it shall be free to propose negotiations for the modification of this Agreement; and if agreement with respect thereto is not reached within thirty days following receipt of such proposal, the Government making such proposal shall be free to terminate this Agreement in its entirety on thirty days' written notice.

#### ARTICLE XIV

The Government of each country reserves the right to withdraw or to modify the concession granted on any article under this Agreement, or to impose quantitative regulations on the importation of any such article if, as the result of the extension of such concession to other foreign countries, such countries obtain the major benefit of the concession, and if in consequence imports of the article concerned increase to such an extent as to threaten serious injury to domestic producers: Provided, That before any action authorized by the foregoing reservation is taken, the Government proposing to take such action shall give notice in writing to the other Government of its intention to do so, and shall afford such other Government an opportunity within thirty days after receipt of such notice to consult with it in respect of the proposed action.

#### ARTICLE XV

1. Should any measure be adopted by the Government of either country which, while not conflicting with the terms of this Agreement, appears to the Government of the other country to have the effect of nullifying or impairing any of the objects of the Agreement, the Government which has adopted any such measure shall consider such representations and proposals as the other may make, with a view to effecting a mutually satisfactory adjustment of the matter.

2. The Government of each country will accord sympathetic consideration to, and when requested will afford adequate opportunity for consultation regarding, such representations as the other Government may make with respect to the operation of customs laws and regulations, quantitative restrictions on imports or the administration thereof, the observance of customs formalities, and the application of sanitary laws and regulations for the protection of human, animal or plant health or life.

3. In the event that the Government of either country makes representations to the Government of the other country in respect of the application of any sanitary law or regulation for the protection of human, animal or plant health or life, and if there is disagreement with respect thereto, a committee of technical experts on which each Government will be represented shall, on the request of either Government, be established to consider the matter and to submit recommendations to the two Governments.

## ARTICLE XVI

The provisions of this Agreement relating to the treatment to be accorded by the United States of America and Canada, respectively, to the commerce of the other country shall apply, on the part of the United States of America, to the continental territory of the United States and such of its territories and possessions as are included in its customs territory on the day of the signature of this Agreement. The provisions of this Agreement relating to most-favored-nation treatment shall apply, however, to all territories under the sovereignty or authority of the United States of America, other than the Panama Canal Zone.

## ARTICLE XVII

Except as otherwise provided in Article V of this Agreement:

(a) Nothing in the Agreement shall entitle the United States of America to claim the benefit of any treatment, preference or privilege which may now or hereafter be accorded by Canada exclusively to territories under the sovereignty of His Majesty the King of Great Britain, Ireland and the British dominions beyond the Seas, Emperor of India, or under His Majesty's protection or suzerainty.

(b) Nothing in the Agreement shall entitle Canada to claim the benefit of any treatment, preference or privilege which may now or hereafter be accorded by the United States of America, its territories or possessions or the Panama Canal Zone exclusively to one another or to the Republic of Cuba. The provisions of this subparagraph shall continue to apply in respect of any benefits now or hereafter accorded by the United States of America, its territories or possessions or the Panama Canal Zone to the Philippine Islands, irrespective of any change in the political status of the Philippine Islands.

## ARTICLE XVIII

1. The present Agreement shall be proclaimed by the President of the United States of America and shall be ratified by His Majesty the King of Great Britain, Ireland and the British dominions beyond the Seas, Emperor of India, in respect of Canada. It shall enter definitively into force on the day of the exchange of the instrument of ratification and a copy of the proclamation, which shall take place at Ottawa as soon as possible.

2. Pending the definitive coming into force of this Agreement, the provisions of Article IX shall be applied provisionally on and after the day following the proclamation of the Agreement by the President of the United States of America, and the provisions of Article I, Article VI and Article VII shall be applied provisionally on and after January 1, 1939, subject to the reservations and exceptions elsewhere provided for in this Agreement.



3. Upon the provisional application of Article I, Article VI and Article VII of the present Agreement, and during the continuance of such provisional application, the provisions of Article I, Article III and Article IV of the Trade Agreement concluded between the United States of America and Canada on November 15, 1935, at Washington shall be inoperative, and upon the definitive coming into force of the present Agreement the whole of the said Agreement of November 15, 1935, shall terminate.

4. Subject to the provisions of Article X and Article XIII, this Agreement shall remain in force for a term of three years from the date of the provisional application of Article IX, and, unless at least six months before the expiration of the aforesaid term of three years, the Government of either country shall have given notice to the other Government of intention to terminate the Agreement upon the expiration of that term, the Agreement shall remain in force thereafter, subject to the provisions of Article X and Article XIII, until six months from the date on which the Government of either country shall have given notice to the other Government of intention to terminate the Agreement.

In witness whereof the respective Plenipotentiaries have signed this Agreement and have affixed their seals hereto.

Done in duplicate, at the City of Washington, this seventeenth day of November, 1938.

CORDELL HULL	[SEAL]
W. L. MACKENZIE KING	[SEAL]

[For schedules annexed to agreement, see 53 Stat. 2357 or p. 10 of EAS 149.]

#### EXCHANGE OF NOTES

*The Secretary of State to the Canadian Minister*

DEPARTMENT OF STATE

WASHINGTON

November 17, 1938

SIR:

I have the honor to inform you that the Government of the United States, in the special circumstances, will refrain from claiming under Article I of the Trade Agreement signed this day any advantages now accorded or which may hereafter be accorded by Canada to any territory under the mandate of His Majesty the King of Great Britain, Ireland and the British dominions beyond the Seas, Emperor of India, which is administered as an integral portion of territory under His Majesty's sovereignty or protection or which

is joined in a customs union with a territory under His Majesty's sovereignty or protection.

Accept, Sir, the renewed assurances of my highest consideration.

CORDELL HULL

The Honorable

SIR HERBERT MARLER, P.C., K.C.M.G.,  
*Minister of Canada.*

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*The Canadian Minister to the Secretary of State*

CANADIAN LEGATION

WASHINGTON

*November 17, 1938*

SIR,

I have the honour to acknowledge the receipt of your Note of today's date, informing me, with reference to the Trade Agreement signed this day, that the United States of America will, in the special circumstances, refrain from claiming under Article I of the Agreement any advantages now accorded or which may hereafter be accorded by Canada to any territory under the mandate of His Majesty the King of Great Britain, Ireland, and the British dominions beyond the Seas, Emperor of India, which is administered as an integral portion of territory under His Majesty's sovereignty or protection or which is joined in a customs union with a territory under His Majesty's sovereignty or protection.

I have taken note with pleasure of your communication in the above sense.

I have the honour to be with the highest consideration Sir

Your most obedient humble servant

HERBERT M. MARLER

The Honourable CORDELL HULL,

*Secretary of State of the United States,  
Washington, D.C.*

#### LUMBER DECLARATION

The Governments of Canada and the United States of America, desiring to proceed toward the removal of those restrictions on the international trade in lumber which have operated to the disadvantage of their respective lumber industries;

Recognizing that as a first step towards this objective the duties and taxes levied on lumber imported into the United States from Canada were reduced by 50 per cent to \$2 per thousand feet in the Trade Agreement concluded

between Canada and the United States of America on November 15, 1935;

Noting that as a consequence of the coming into force of the Trade Agreements signed this day:

(1) the United Kingdom duty on softwood lumber in those forms of which the United States is an important supplier of the United Kingdom's requirements will not exceed 16 shillings per standard (approximately \$2 per thousand feet), without any restriction as to the quantity that may be imported at the reduced rate of duty;

(2) the preferential margins enjoyed by lumber of Empire origin in the British West Indian Colonies will not exceed \$2 per thousand feet;

(3) the Canadian duty on planed or dressed lumber imported from the United States will be reduced by 50 per cent and the special excise tax of 3 per cent will be removed from rough and dressed lumber, without any restriction as to the quantity that may be imported either at the reduced rates of duty or free;

(4) the quantity of red cedar shingles that may be imported into the United States free of duty will be fixed at 30 per cent of United States consumption and imports in excess of this quantity will not be dutiable at more than 25 cents per square;

(5) the quantitative restriction on the importation into the United States of lumber of Douglas fir and Western Hemlock at the reduced rates of duty and tax in effect since January 1st, 1936, and confirmed by the Trade Agreement signed today, will be removed; and that

(6) lumber and timber imported from Canada will not be required to be marked to indicate their country of origin.

Noting further that the Governments of Canada, the United Kingdom, and the United States of America are, for their part, prepared to give effect to the arrangement envisaged in the Trade Agreement between the United Kingdom and the United States whereby lumber of the values and sizes therein set forth shall on its importation into the United Kingdom from the United States of America be admitted free of duty as soon as the import excise tax now levied on Canadian lumber imported into the United States is removed.

Have resolved to record their readiness to cooperate, as opportunity occurs, in restoring the reciprocal advantages enjoyed by the timber products of their respective countries prior to the general resort to retaliatory restrictions on the importation of lumber and to confirm their understanding that the Government of Canada will interpose no objection to the reduction by Empire Governments other than the United Kingdom of differential duties now levied on United States lumber to a point at which the margin of preference enjoyed by Canadian lumber will not exceed the duties and taxes now imposed on Canadian lumber on importation into the United States and that when, and for so long as, the United States import excise tax ceases to apply to

lumber imported from Canada, Canada will concur in any request it may receive from such Empire Government for the extension to United States lumber of the tariff treatment enjoyed by Canadian lumber.

WASHINGTON,

*November 17, 1938.*